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VIA EMAIL

To Our Investment Adviser Clients and Other Friends:

This is our annual letter briefly reviewing various issues that our investment adviser clients should consider over the next few weeks. We are pleased to respond to questions, assist you in preparing needed forms and otherwise assist you in satisfying any of the requirements discussed below. Please contact one of the attorneys in the Investment Funds & Advisers Group if you need assistance.

Legal, Tax and Regulatory Changes

1. **Federal Tax Developments**. In July 2025, the US Congress enacted the One Big Beautiful Bill Act (the "**OBBBA**"), which made significant changes to the US Internal Revenue Code (the "**Code**") affecting investors, fund sponsors and portfolio companies, as further described in our client alert: Federal, State and Local Tax Developments. The OBBBA extended or restored several business favorable provisions (including the EBITDA-based limitation for deducting business interest under Code Section 163(j) and bonus depreciation) and extended or made permanent several pass-through and individual provisions (including the Code Section 199A deduction and the limitation on excess business losses under Code Section 461(l)).

The OBBBA also permanently disallowed miscellaneous itemized deductions (meaning, for non-corporate taxpayers, investment expense deductions for management fees generally remain unavailable) and replaced the former "Pease" limitation with a new limitation (sometimes referred to as the "2/37" limitation), intended to cap the tax benefit of itemized deductions for certain high-income taxpayers. The OBBBA enhanced qualified small business stock benefits for stock acquired after July 4, 2025, including new 50%/75%/100% exclusion tiers at respectively 3/4/5-year holding periods and increases to the per-issuer gain cap (generally to the greater of $15 million or 10x basis) and the gross assets threshold (to $75 million).

2. **Amendments to Regulation S-P**. Regulation S-P requires investment advisers registered with the Securities and Exchange Commission ("**SEC**") to adopt written policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information. As described in our client alert, Regulation S-P Amendments Applicable to SEC-Registered Investment Advisers, amendments to Regulation S-P require SEC-registered advisers to develop a written incident response program to handle cybersecurity breaches and to take certain steps to oversee service providers with access to customer

information (the "**Reg S-P Amendments**"). Large SEC-registered advisers with over $1.5 billion in AUM were required to comply with the Reg S-P Amendments as of December 3, 2025, and all other SEC-registered advisers must comply by June 3, 2026.

To be compliant, an incident response program must require the SEC-registered adviser to (a) assess the scope of any unauthorized data access event and identify compromised information and systems, (b) take steps to contain the breach and prevent further unauthorized access or use of customer information and (c) notify each affected individual whose sensitive customer information was, or is reasonably likely to have been, accessed or used without authorization, as soon as practicable, but no later than 30 days after the SEC-registered adviser becomes aware of the breach, unless the adviser determines (after reasonable investigation) that sensitive customer information has not been, and is not reasonably likely to be, used in a manner that would result in substantial harm or inconvenience. Although an incident response program must address these general elements to comply with the Reg S-P Amendments, SEC-registered advisers should tailor their policies and procedures to their particular circumstances.

The Reg S-P Amendments require SEC-registered advisers to oversee service providers with access to the adviser's customer information and must ensure that such service providers will notify the adviser as soon as possible, but no later than 72 hours, after becoming aware of unauthorized access to the service providers' customer information systems. The Reg S-P Amendments do not require the 72-hour notification requirement to be included in a written contract with the service provider, but a contract provision is a practical way to comply with the Reg S-P Amendments.

3. **SEC Issues Guidance on 506(c) Investor Verification**. On March 12, 2025, the SEC released a no-action letter providing for reasonable steps that investment advisers relying on Rule 506(c) of Regulation D of the Securities Act of 1933 may take to verify an investor's "accredited investor" status, as defined in Regulation D. Under Rule 506(c), investment advisers may engage in general solicitation to market unregistered private funds if they take reasonable steps to verify investors are accredited. Such steps may include reviewing an investor's tax returns or relying on other approved third-party verification of net worth. This no-action letter clarified that if (a) an investor invests over a certain threshold ($200,000 for natural persons and $1 million for entities), (b) an investor represents it is accredited and (c) such minimum investment amount is not financed in whole or in part by any third party for the specific purpose of making that investment, then no further steps are required to verify net worth. This update may make Rule 506(c) reliance more appealing for investment advisers than 506(b), which historically has limited a fund manager's ability to discuss its funds publicly.

4. **CFTC Reinstates Registration Relief to Certain SEC-Registered Investment Advisers Operating Commodity Pools**. On December 19, 2025, the Commodity Futures Trading Commission ("**CFTC**") issued No-Action Letter 25-50, providing interim relief from CPO and CTA registration for SEC-registered investment advisers operating certain private funds. Under this relief, eligible advisers may rely on this position if (a) they reasonably believe all investors in those pools are qualified eligible persons ("**QEPs**"), which includes qualified purchasers (as defined under the Investment Company Act of 1940), (b) the pools' interests are exempt from registration under the Securities Act of 1933, (c) the adviser files Form PF with

respect to the relevant pools, and (d) the adviser files the requisite notice of reliance with CFTC staff. Advisers relying on No-Action Letter 25-50 may de-register as CPOs without triggering redemption rights under CFTC Rule 4.13(e), effectively restoring a version of the former QEP Exemption rescinded in 2012. More information can be found in our client alert: CFTC Reinstates Registration Relief to Certain SEC-Registered Investment Advisers Operating Commodity Pools.

5. **California Diversity Reporting for VC Funds**. California's Senate Bill 164 imposes new reporting obligations on venture capital investment advisers with a California nexus—that is, advisers that are headquartered in California, have a significant presence or maintain an office in California, solicit or receive investments from California residents or make venture capital investments in companies that are headquartered or maintain a significant presence in California ("**VC Covered Advisers**"). All VC Covered Advisers must register with the Department of Financial Protection and Innovation ("**DFPI**") starting March 1, 2026, and are required to annually submit, by April 1 of each year, aggregated demographic data on the founding teams of their portfolio companies, including gender identity (with nonbinary options), race, ethnicity, disability status, LGBTQ+ status, veteran status and California residency. VC Covered Advisers are also required to track and report the proportion of their investments in diverse-founded companies, maintain multi-year records, and ensure the data is anonymized in compliance with the statute. Noncompliance may result in administrative penalties, including a daily fine up of $5,000.

Despite the approaching first reporting compliance date of April 1, 2026, as of the date of this publication the DFPI has not released guidelines on how VC Covered Advisers should register or released the survey template VC Covered Advisers will need to provide to portfolio companies.

6. **New Amended Regulations under the California Consumer Privacy Act (the "CCPA")**. Generally, an adviser that does business in California and, as of January 1, had gross annual revenue of over $26,625,000 in the prior calendar year will be subject to CCPA privacy rules for the current calendar year. This gross annual revenue threshold adjusts every odd year based on increases to the Consumer Price Index. An adviser subject to the CCPA may need to update its website, develop an additional CCPA-specific privacy policy, provide notifications whenever personal information is collected from California residents and update its contracts with service providers, among other tasks. In addition, CCPA subject businesses with California-resident employees, job applicants, independent contractors and other individuals whose personal information is stored or processed in human resources information systems, CRM systems and contact management systems are also entitled to certain rights under the CCPA. More information can be found in our client alert: Upcoming July 1, 2023 Compliance Deadline Under the California Consumer Privacy Act. Penalties for noncompliance include up to $2,663 per violation (and higher for intentional violations), with each impacted California consumer potentially giving rise to a separate violation.

New CCPA regulations were approved in September 2025 that cover a variety of topics and will be phased in incrementally. Effective January 1, 2026, new website opt-out requirements apply to CCPA-subject businesses that share or sell personal information for cross-

context behavioral advertising. CCPA-subject businesses that process sensitive personal information (except for HR uses such as payroll or benefits administration) or that engage in certain other enumerated activities that present significant risks to consumer privacy must also complete risk assessments beginning on January 1, 2026, with attestation submissions regarding those risk assessments due to the California Privacy Protection Agency beginning on April 1, 2028. Notably, most advisers that only process California residents' sensitive personal information that is also information covered under the protections of the Gramm-Leach Bliley Act are exempt from the risk assessment requirement.

By January 1, 2027, CCPA-subject businesses must (a) give consumers notice when using automated decision-making technology ("**ADMT**") that processes personal information and replaces human decision-making, if ADMT is used to make certain significant decisions (including any decision that results in the provision or denial of financial or lending services or employment/contracting opportunities); (b) allow consumers to opt out of such ADMT information processing, unless an exception applies; and (c) respond to consumers' requests to access their information subject to ADMT. While most advisers using ADMT likely will not be using it in a way that will trigger these notice and opt-out requirements, they may trigger them in connection with employee hiring.

Other jurisdictions have also adopted or are in the process of adopting consumer privacy protection requirements. Approximately 19 states have enacted data privacy laws, and Connecticut, Indiana, Kentucky, Oregon, Utah, and Virginia implemented privacy law amendments effective January 1, 2026.

7. **Changes to the US Outbound Investment Security Program**. The Outbound Investment Security Program and its regulations, effective January 2, 2025, were issued to prohibit, or require notification of, certain direct or indirect investments by US persons in covered foreign persons who have a nexus to the People's Republic of China (including Hong Kong and Macau) that are engaged in activities involving semiconductors and microelectronics, quantum information technology or artificial intelligence. The Comprehensive Outbound Investment National Security Act of 2025 (the "**COINS Act**") became law on December 18, 2025, and expanded many of the concepts under the Outbound Investment Security Program, directing the Secretary of the Treasury to issue additional regulations restricting US outbound investments in countries of concern involving certain technologies. The Secretary of the Treasury will issue new regulations under the COINS Act, which may not be ready until 2027. Pending promulgation of COINS Act regulations, advisers should continue to comply with the current Outbound Investment Security Program.

Under the current Outbound Investment Security Program, a covered transaction that would be either a prohibited transaction or a notifiable transaction may qualify for a transaction exception. Exceptions include, but are not limited to, any investment by a US person: (a) in a publicly traded security (including a security traded on a non-US exchange, a US exchange or a security traded OTC; provided that such transaction does not afford the US person rights beyond standard minority shareholder protections) or security issued by a registered investment company, such as an index fund, mutual fund or exchange-traded fund, (b) made as a limited partner in a venture capital fund, private equity fund, fund of funds or other pooled investment

fund, if such investment is $2 million or less or if the US person has received a contractual assurance that its capital will not be used by the fund to engage in what would be a covered transaction or (c) in certain derivative securities (so long as such derivative does not confer the right to acquire equity, any rights associated with equity or any assets in or of a person from a country of concern). On December 23, 2025, additional FAQs were issued that describe when a follow-on offering and the acquisition of a convertible note would be considered an excepted publicly traded security.

Future regulations under the COINS Act are anticipated to resolve differences between the existing Outbound Investment Security Program and the COINS Act. The COINS Act does not on its face prohibit any transaction. Instead it empowers the Secretary of the Treasury to designate certain transactions as prohibited if they are related to a "prohibited technology." Unless the Secretary acts to prohibit transactions in specific technical areas, the default for COINS Act covered national security transactions will be a notification requirement.

Other key provisions of the COINS Act (i) expand the scope of technologies to include high-performance computing and supercomputing and hypersonic systems (in addition to existing technologies covered by the Outbound Investment Security Program), (ii) expand the countries of concern to include Cuba, Iran, North Korea, Russia and Venezuela (in addition to the People's Republic of China, including Hong Kong and Macau), (iii) change the exceptions and exemptions under the Outbound Investment Security Program (however, publicly traded securities will remain exempt, and regulations may further clarify the scope of that exception) and (iv) broaden the definition of who is a "covered foreign person."

8. **Risk Management Considerations for AI Adoption and Threat Mitigation**. In the SEC's 2026 Examination Priorities, the SEC noted it is focused on AI technologies and their risks. When examining firms that use AI tools, the Division of Examinations will assess the accuracy of representations as to AI use and the use of controls to confirm that recommendations from AI tools are consistent with regulatory obligations. The Division will review whether advisers have implemented adequate policies and procedures to supervise AI tools, including if AI is used for tasks related to fraud prevention, back-office operations and trading functions.

Advisers may want to consider establishing an AI use policy to set limits on what AI tools are approved and how they can be used. Advisers should consider sensitive data disclosure risk and either limit AI tool use to encrypted, closed systems or restrict what data employees may input into AI tools. GenAI tool output should be carefully screened, especially if public-facing, for compliance with the Advisers Act anti-fraud and marketing disclosure requirements. Advisers relying on AI tools for operations may also want to update their offering documents or Part 2A of their ADV to disclose risks related to the use of those AI tools.

Advisers should consider adopting formal policies regarding the use of automated meeting transcription and notetaker tools for client meetings. California prohibits intentionally recording a confidential communication, including by video conferencing, without the consent of all parties to the communication. A handful of other states have similar requirements. The law is less settled when it comes to using an AI transcription tool. However, a state that requires consent to recording may interpret transcription to be akin to a recording, and it is possible that

saving a transcription without obtaining consent or giving proper notice (as applicable) could violate state law. Although most video conferencing recording or transcription tools have notification pop-ups stating the meeting is being recorded or transcribed, most will start recording regardless of whether someone actually clicks "accept," and dial-in users might not receive an oral notification or be asked to give verbal consent. Advisers relying regularly on these tools may consider seeking advance consent to their use by written agreement.

Advisers should also consider external threats from AI. GenAI-powered phishing emails are now grammatically flawless, context-aware and emotionally persuasive, making many traditional red flags obsolete. The Arup deepfake scam is a chilling example: an employee was tricked into transferring $25.6 million during a video call with an AI-generated fake CFO. Advisers may want to consider enhancing employee training, engaging with outsourced cybersecurity providers and strengthening identify verification protocols to guard against impersonation risk.

9. **Delayed Rules Affecting Investment Advisers.**

(a) **New Anti-Money Laundering Requirements**. On December 31, 2025, the US Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**") released a final rule delaying the effective date of the new rule requiring covered advisers to establish anti-money laundering programs, counter-terrorist financing programs and file suspicious activity reports with FinCEN (the "**FinCEN AML Rule**") from January 1, 2026, to January 1, 2028. We expect to provide updates regarding any further changes to the scope of the delayed FinCEN AML Rule.

(b) **Form SHO Compliance**. On December 3, 2025, the SEC granted an extension to the compliance deadline under Rule 13f-2 of the Securities Exchange Act of 1934 for short position reporting on Form SHO. The SEC's order pushes the compliance date to January 2, 2028. As a result, institutional investment managers will not be required to file Form SHO until February 14, 2028.

This extension was provided following the US Court of Appeals for the Fifth Circuit's remand to instruct the SEC to consider and quantify the cumulative economic impact of Form SHO when taken together with the Rule 10c-1a securities lending rules, which were also delayed to a similar timeframe. The SEC noted that it needs time to respond to take further actions, which may include proposing amendments to Rule 13f-2. More information regarding Form SHO is available in our previous client alerts: The SEC Delays Form SHO Compliance to January 2, 2028; New Monthly Short Position Reporting.

(c) **Form PF Amendments**. On September 17, 2025, the CFTC and SEC granted an additional one-year extension to the compliance date for amendments to Form PF that were scheduled to become effective on October 1, 2025. This extension pushes the compliance date to October 1, 2026, and the CFTC and SEC may make further changes to Form PF in the meantime.

10. **PTE Tax and the SALT Deduction**. Many states, including California, have enacted elective pass-through entity ("**PTE**") tax regimes that generally permit certain

partnerships and S corporations to pay an entity level state income tax and provide owners a corresponding state tax credit, as well as an uncapped federal income tax deductions. For federal income tax purposes, Internal Revenue Service ("**IRS**") guidance generally supports treating qualifying entity level PTE taxes as a deductible expense of the pass-through entity (rather than as an owner level SALT itemized deduction), although state by state rules and technical structuring considerations remain important.

In July 2025, the OBBBA increased the SALT cap to $40,000 for 2025 (with the cap increasing by 1% per year from 2026 through 2029), but the cap phases down for taxpayers with modified adjusted gross income above $500,000 (with a $10,000 floor) and reverts to $10,000 beginning in 2030. Accordingly, for many higher income owners (including many fund principals), the incremental federal benefit of PTE tax elections may remain significant notwithstanding the temporary increase in the SALT cap, while for other owners the benefit may be reduced. Modeling should be performed annually, taking into account expected income levels, residency, and the composition of management fee versus carried interest/invested capital income.

California's elective PTE tax regime has been extended by five years through taxable years beginning before January 1, 2031. For taxable years beginning on or after January 1, 2026, the statute also modifies the June 15 prepayment mechanics: failure to make (or underpay) the June 15 payment generally will no longer disqualify the election, but the owners' PTE credits are reduced by 12.5% of the payment shortfall (allocated pro rata among the owners). Asset managers that are evaluating a California PTE election (or similar elections in other states), should review governing documents and investor communications to address (i) who controls the election, (ii) how the economic burden/benefit of the PTE election is allocated among owners, and (iii) cash flow and withholding implications.

11. **California Sourcing of Non-Resident Asset Management Fees**. California has finalized amendments to its market-based sourcing regulation addressing how receipts from certain "asset management services" are assigned to California's sales factor (Cal. Code Regs. Section 25136-2). The amendments were finalized in 2025 and apply for taxable years beginning on or after January 1, 2026. These rules may cause a portion of an asset manager's receipts (and therefore business income) to be apportioned to California based on fees attributable to California-domiciled investors (and, in certain cases, beneficial owners), which may result in California filing obligations and tax exposure even for asset managers with limited or no physical presence in California. Asset management services are defined for these purposes as providing direct or indirect management, distribution or administration services to a fund.Asset managers not resident in California may be subject to California franchise or income tax to the extent they are treated as doing business in California and have business income apportioned to California. Business income is apportioned by reference to the taxpayer's California sales factor (i.e., sales assigned to California divided by total sales everywhere). Sales of services are generally assigned to California if the customer receives the benefit of services in California.

The final California sourcing regulations provide that the benefit of asset management services is received where the fund's investors are domiciled. Where an investor holds its interest for beneficial owners, the rules generally look through to the domicile of such beneficial owners.

An investor's domicile is presumed to be the investor's billing address, unless the asset manager has actual knowledge that the investor's principal place of business (or, for individuals, primary residence) is different from the investor's billing address. For each tax year, the California assigned percentage is generally computed as the average of the beginning of year and end of year percentages of fund value held by California-domiciled investors and beneficial owners; if precise percentages cannot be determined, a reasonable estimate is permitted based on the effort and cost of obtaining the information.

Asset managers should consider confirming that subscription/onboarding and administrator reporting processes capture and retain reliable investor address data (and, where relevant, beneficial owner domicile information) in advance of preparing 2026 California returns.

12. **San Francisco Proposition M Changes Gross Receipts Tax**. On November 5, 2024, San Francisco voters approved Proposition M, which modifies the San Francisco gross receipts tax, with implications for asset managers residing in San Francisco or that have investors located in San Francisco.

Absent Proposition M, for taxpayers that engaged in business inside and outside San Francisco, gross receipts would have been apportioned to San Francisco based on payroll (the percentage of compensation paid to employees in San Francisco out of total compensation paid to all employees). Proposition M changes both the tax rates and the apportionment formulas. For tax years 2025 and 2026, under Proposition M, taxpayers with gross receipts between $2.5 million and $25 million will see an increase in tax rate to 3%, which increases further in subsequent years. Tax rates are applied to bracketed amounts of income, with rates increasing at each bracket. Instead of apportioning gross receipts to be taxed in San Francisco based solely on payroll, 75% of gross receipts are apportioned to San Francisco based on sales and only 25% are apportioned to San Francisco based on payroll.

Gross receipts from sales of services (for the 75% portion referenced above) are taxed in San Francisco if the purchaser of services received the benefit of the services in the city. In October 2025, the City's Tax Collector promulgated final sourcing guidance explaining the meaning of receiving the benefit of services in the city (Tax Collector Regulation 2025-1). The regulation includes a specific rule for asset management services that generally allocates receipts to San Francisco based on the average value of interests held by investors (or beneficial owners) domiciled in San Francisco, using an averaging methodology based on beginning of year and end of year values, and provides cascading rules (including reasonable approximation and billing address based presumptions) where precise data is not available. The sourcing rule closely parallels the California Regulation Section 25136-2 (discussed above) and is effective for tax years beginning on or after January 1, 2025.

In addition, the small business exemption threshold has been increased from $2.25 million to $5 million. Special aggregation rules apply to determining whether a taxpayer meets that threshold, and advisers under the small business exemption threshold are not subject to this tax.

Despite the increase in tax rates, San Francisco-based advisers to investment funds with investors located outside San Francisco may find that their overall tax liability will go down because of the decrease in the tax base that is apportioned to San Francisco. Advisers to investment funds with investors located in San Francisco may see their exposure to SF gross receipts tax grow.

13. **Foreign Government Investor Tax Regulations**. On December 12, 2025, the US Treasury and the IRS released final regulations and new proposed regulations under Code Section 892, which are particularly relevant to sovereign wealth funds ("**SWF**") and the asset managers with which they invest. Under Code Section 892, a foreign government generally is exempt from US tax on certain investment income. However, it loses its Code Section 892 exemption if it engages in commercial activity and is subject to tax on income derived from commercial activity.

The final regulations:

- Narrow the scope of a rule that would treat a SWF investor as a US real property holding corporation and thus automatically engaged in commercial activity (the "USRPHC per se"), which would cause it to lose its Section 892 exemption;

- Clarify that, when acting as a non dealer, a SWF generally investing and trading for its own account in common financial derivatives (e.g., swaps, options, forwards and futures) is not commercial activity that gives rise to tax (subject to special rules where an instrument is treated as ownership of the referenced asset);

- Finalize a "qualified partnership interest" framework (formerly the "limited partner" exception) that can help prevent attribution of a partnership's commercial activities to a sufficiently passive SWF investor (while leaving the investor's distributive share of any commercial activity income taxable); and

- Finalize targeted relief for inadvertent commercial activity (subject to cure and recordkeeping requirements).

In light of these changes and the newly clarified exceptions, foreign governments and their SWFs should reconsider the structure of their investments in funds and other partnerships.

The proposed regulations under Code Section 892 seek to clarify when debt acquisitions constitute commercial activity and were the IRS's first published attempt to set out rules specific to debt investments for Section 892. If the proposed regulations are adopted, SWFs that engage in loan origination or debt acquisition will need to carefully review their Code Section 892 eligibility in light of the proposed regulations.

14. **Fifth Circuit Rejects "Passive Investor" Test for the Self-Employment Tax Exception**. On January 16, 2026, the U.S. Court of Appeals for the Fifth Circuit issued a

decision in *Sirius Solutions, L.L.L.P. v. Commissioner,* finding that partners that have limited liability under state law are sufficient to constitute "limited partners" that are exempt from self-employment tax. It rejected the IRS's argument that partners must be "passive" investors and satisfy a functional test in order to qualify for the limited partner exemption. The ruling provides precedent against the Tax Court's prior decisions in *Denham Capital Management LP v. Commissioner* and *Soroban Capital Partners LP v. Commissioner.*

On December 23, 2024, the Tax Court ruled in *Denham Capital Management LP v. Commissioner* that limited partners that actively participated in the activities of a private equity fund manager were subject to self-employment tax. *Denham* is the first court case applying the functional analysis test described in the November 2023 ruling in *Soroban Capital Partners LP v. Commissioner*. In *Soroban*, the Tax Court held that limited partners of a state law limited partnership were not automatically entitled to the limited partner exception to self-employment tax under Code Section 1402(a)(13) but rather were required to satisfy a functional test showing that they were not active partners.

The Tax Court in *Denham* determined that the partners of the private equity fund manager were not entitled to the limited partner exception by considering the functional test factors, including the guaranteed payments that the partners received as compared to their distributive share of income, their total returns earned relative to their capital contributions, their roles as disclosed in investment fund offering materials and their control over firm personnel decisions.

In addition, both *Denham* and *Soroban* are being appealed; the former in the First Circuit, and the latter in the Second Circuit. In the meantime, advisers and principals relying on the limited partner exception should continue to monitor developments and consider whether their current structure, economics, and governing documents likely to be viewed as consistent with limited partner exception under the latest developments.

If your firm relies on the limited partner exception from self-employment tax please see our client alert on the *Soroban* decision for more information.

15. **Tax Litigation Developments Regarding ECI**. YA Global Investments LP, a Cayman Islands limited partnership (the "**Fund**"), engaged in equity-related lending transactions, filed an appeal in May 2025 over a November 2023 ruling by the Tax Court that it was engaged in a US trade or business and that it owed tax on income effectively connected with a US trade or business ("**ECI**").

In the ruling, the Tax Court determined that the investment adviser of the Fund was the Fund's agent, such that the adviser's activities were attributed to the Fund and caused the Fund to be engaged in a US trade or business. The adviser was deemed to be an agent of the Fund because the investment management agreement expressly appointed it as an "agent," the Fund had the ability to give interim instructions that restricted the adviser's discretion to manage assets, and the adviser's activities were not conducted to protect an economic interest that it held in the fund. In addition, the activity of the adviser satisfied a three prong test: (a) its activity was continuous, regular, and engaged in profit, (b) its activity was not limited to the management of investments largely in part because of fees received directly from portfolio companies that

represented more than a return on capital and (c) its activities were also not that of a trader such that it could qualify for the trading safe harbor. In addition, the Tax Court determined that the Fund was a dealer in securities subject to the section 475 mark-to-market rules.

The appeal argues that the Tax Court misapplied the agency analysis and that the Fund was merely investing and qualified for the trading safe harbor. The outcome of the appeal may have significant implications for credit fund structures in particular.

16. **Private Funds in 401(k) Plans**. On August 7, 2025, President Trump issued Executive Order 14330, Democratizing Access for 401(k) Investors, directing the Department of Labor, the SEC and other federal agencies to reexamine existing regulatory guidance that have limited 401(k) and other defined contribution plans from investing in alternative assets classes. The Executive Order states that it is the policy of the federal government that, every American "should have access to funds that include investments in alternative assets" when prudently selected by a fiduciary, and it specifically directs the Department of Labor to issue guidance to help fiduciaries carry out this policy consistent with the Employee Retirement Income Security Act of 1974 ("**ERISA**") by February 3, 2026. The Department of Labor took its first action on September 23, 2025, by issuing Advisory Opinion 2025-04A to clarify that a target date fund with income guarantees can qualify as a default investment for a 401(k) plan. The Department of Labor is expected to issue more guidance for other asset classes and, potentially, a fiduciary safe harbor to help reduce litigation risk in early 2026.

17. **ERISA Proxy Voting Decision**. A federal district court in Texas recently found 401(k) plan fiduciaries violated ERISA because of their proxy voting practices. In *Spence v. American Airlines*, participants in 401(k) plans sponsored by American Airlines filed a class action suit against the airline and its benefits committee arguing that the defendants breached their duties of loyalty and prudence by allowing an investment manager to pursue ESG objectives in its proxy voting practices. In a decision published in January 2025, the court found that the defendants violated their fiduciary duty of loyalty (but not prudence) by allowing ESG factors to affect plan management, including proxy voting. In September 2025, the court determined that plan participants did not suffer monetary losses but imposed a variety of requirements on the plan related to the consideration of ESG factors and proxy voting. The court's legal positions are novel and arguably inconsistent with well-established ERISA jurisprudence. However, the court's skepticism that fiduciaries can consider ESG factors is likely consistent with the Trump Administration's views. The Department of Labor has indicated the agency will be issuing new proxy voting regulations soon.

FEDERALLY REGISTERED INVESTMENT ADVISERS

1. **Amendments to Form ADV**. A comprehensive overview on amendments to Form ADV can be found in our article: Form ADV Compliance for Investment Advisers. All SEC-registered investment advisers must amend Form ADV each year on IARD within 90 days after the end of the advisers' fiscal year. For an adviser whose fiscal year ended December 31, 2025, the deadline is March 31, 2026. The annual amendment must update your firm's responses to all items in Parts 1 and 2 of Form ADV. For each annual amendment, Part 1 is completed as an online form and Part 2A must be uploaded as a separate document in text-searchable PDF

format. An SEC-registered investment adviser is not required to file Part 2B, or any amendments to it, but must keep its updated Part 2B in its records.

The filing fees for an SEC-registered adviser's annual updating amendment are correlated to the adviser's RAUM reported on the Form ADV amendment. You must fund your IARD account with the appropriate amount before you submit the amendment. Information about funding your firm's IARD account is at the IARD Accounting Information site.

In addition to the annual updating amendment, an SEC-registered (or state-registered) adviser must promptly amend Part 1A of its Form ADV, including corresponding sections of Schedules A, B, C, D, and R, if:

- It is adding or removing a relying adviser as part of its umbrella registration;
- Information in Items 1 (except 1.O. and Section 1.F. of Schedule D), 3, 9 (except 9.A.(2), 9.B.(2), 9.E. and 9.F.) or 11 of Part 1A, Items 1, 2.A. through 2.F. or 2.I. of Part 1B or Sections 1 or 3 of Schedule R, becomes inaccurate in any way; or
- Items 4, 8, or 10 of Part 1A, Item 2.G. of Part 1B, or Section 4 of Schedule R become materially inaccurate.

An SEC-registered (or state-registered) adviser must also promptly amend its Form ADV when it receives its annual audit if question 23(h) of Item 7.B.(1) was previously answered as "Report Not Yet Received." Failure to file this amendment exposes private fund advisers to SEC enforcement actions under the Advisers Act Custody Rule.

An other-than-annual amendment is not required to update information not contained in the aforementioned sections, even if those items have become inaccurate.

Part 2 must be amended promptly whenever any information in it becomes materially inaccurate, although no update of Part 2 between annual amendments is required if only the amount of assets an adviser manages or its fee schedule have changed. An other-than-annual amendment to Part 2 does not need to include a summary of material changes.

2. **Requirements to Deliver Part 2 to Clients**. An SEC-registered adviser whose Part 2A has materially changed since the last annual updating amendment must deliver to clients annually within 120 days after the adviser's fiscal year end either (a) an amended Part 2A, including a material changes summary or (b) a separate material changes summary that also offers to provide a copy of Part 2A. For an adviser whose fiscal year ended December 31, 2025, the deadline is April 30, 2026. Clients that previously received Part 2B need not be provided an updated copy of Part 2B unless the disciplinary information disclosed in it has changed materially.

For advisers to private funds, the Part 2 delivery obligation applies to the funds and not to investors in the funds. A private fund is a fund that would be an investment company under the Investment Company Act of 1940 (the "**ICA**"), but for ICA section 3(c)(1) or 3(c)(7). Most

hedge funds, private equity funds and venture capital funds are private funds. To reduce the likelihood of possible claims under the anti-fraud provisions of federal and state securities laws, however, a private fund adviser should consider furnishing Part 2 to each fund investor.

3. **Form CRS**. SEC-registered advisers with "retail clients" are required to file and deliver to those retail clients Part 3 of Form ADV (also called Form CRS). In Form CRS, an adviser must provide a plain English description of the relationship between the adviser and a retail client. A "retail client" is any natural person who seeks or receives advisory services "primarily for personal, family or household purposes." Entities, including investment funds, are not retail clients, even if any fund investor is a natural person.

An SEC-registered adviser must amend its Form CRS within 30 days if any information in it becomes materially inaccurate, and notify its retail investor clients, without charge, of the changes within 60 days after the updates are required to be made. The notice must highlight the changes by, for example, marking the revised text or summarizing the material changes. While an SEC-registered adviser is preparing its required annual amendment to other Parts of Form ADV, it should carefully review its Form CRS to ensure consistency and uniformity across the documents. The instructions for preparing Form CRS can be found here: Form CRS Instructions.

4. **Switching to State Registration**. If the regulatory assets under management ("**RAUM**") reported on your firm's annual updating amendment is below $90 million, the firm will likely be required to withdraw its SEC investment adviser registration no later than 90 days after the annual amendment filing date. In that case, unless the firm qualifies for an exemption from state registration, you should file an application for state registration in time to ensure that it is registered by such applicable date. State registration may take several months.

5. **State Notice Filings**. An SEC-registered adviser may be required to make notice filings and pay fees in each state in which it has clients or a place of business. Some states require an SEC-registered adviser making notice filings to file Form ADV Part 2 and other documents. An SEC-registered adviser that has previously made state notice filings should have received an electronic package from FINRA last fall with instructions for renewing those notice filings and paying the required 2025 renewal fees through the IARD system. These fees are in addition to the IARD filing fees.

6. **Investment Adviser Representatives**. An SEC-registered adviser may be required to register each of its investment adviser representatives in each state in which the representative has clients or a place of business. You should ascertain whether any of your firm's personnel should be registered as an investment adviser representative in one or more states, and, if so, register those persons or renew their registrations in the appropriate states.

7. **Code of Ethics; Annual Review of Policies and Procedures**. An SEC-registered adviser must provide a copy of its code of ethics to any client or prospective client on request, must review its compliance policies and procedures annually and must require employees to certify quarterly or annually that they have complied with the policies and procedures. If the SEC examines your firm, the staff will examine these documents. In general, the annual review should cover the following:

- Any compliance matters that arose last year;
- Any changes in your firm's business activities;
- Any revisions to your firm's policies and procedures required by changes to the Advisers Act or its rules;
- The adequacy of your firm's code of ethics, including documenting that review and assessing the effectiveness of the code's implementation;
- A review and test of your firm's business continuity/disaster recovery plans (including an evaluation of whether you should designate a successor manager or liquidating person);
- A review and test of your firm's cybersecurity program;
- An evaluation of the execution services your firm receives from brokers it uses to execute client trades (if any);
- An evaluation of whether all trade errors have been properly addressed as provided in your firm's trade error policy;
- A determination of whether your firm should provide ethics training to its employees or enhance its code in light of its current practices; and
- An evaluation of whether your policies and procedures are adequately tailored to your business and whether your firm is following them.

8. **Custody**. An SEC-registered adviser that has or is deemed to have custody of client funds or securities must indicate as such on its Form ADV and comply with the Advisers Act Custody Rule. This includes: (a) maintaining client funds and securities with a qualified custodian; (b) having a reasonable basis to believe that the custodian sends account statements to clients at least quarterly; and (c) undergoing an annual surprise examination by an independent public accountant registered with, and subject to inspection by, the Public Company Accounting Oversight Board ("**PCAOB**"). An SEC-registered adviser that manages a private fund is not required to have the qualified custodian deliver quarterly account statements to investors or submit to surprise examinations if the adviser sends the fund's annual audited financial statements to each investor within 120 days (or for a fund of funds, 180 days) after the end of the fund's fiscal year. The financial statements must be prepared in accordance with GAAP and must be audited by an independent public accountant registered with and subject to inspection by the PCAOB.

EXEMPT REPORTING ADVISERS ("ERAs")

1. **SEC and State ERA Exemptions**. An investment adviser with RAUM under $150 million that advises only private funds may be exempt from SEC registration as a private fund ERA under Advisers Act Rule 203(m). An investment adviser that only advises venture capital funds may be exempt from SEC registration as a venture capital ERA under Advisers Act Rule 203(l).

ERAs relying on either of those two exemptions are required to file Part 1A of Form ADV on IARD and disclose organizational and operational information, but need not include all of the information required of SEC-registered advisers. An ERA is not required to prepare and deliver to investors Part 2 of Form ADV. A registered adviser that is switching to ERA status must first withdraw its registration by filing Form ADV-W on IARD before filing its first Part 1A as an ERA.

An adviser with under $25 million in RAUM is considered a small adviser and is generally regulated by state securities authorities (although certain federal statutory provisions still apply to such advisers, such as anti-fraud rules). Most states have exemptions from state adviser registration regimes that are similar to the SEC's ERA exemptions and that require the ERA to file a Form ADV. More information on the requirements for state ERAs can be found in our article: SEC and California Exempt Reporting Adviser Compliance Filing Requirements.

ERAs should be aware that the SEC takes the view that advisers and their affiliates cannot circumvent the requirements under the Advisers Act by separately organizing if they are operationally integrated. For example, an investment adviser relying on the exemption from registration for private fund advisers under section 203(m) of the Advisers Act generally cannot be affiliated and operationally integrated with an adviser that relies on the venture capital fund exemption under section 203(l) of the Advisers Act. If the affiliates are operationally integrated, then each would fail to qualify for either of the SEC registration exemptions.

2. **Amendments to Form ADV**. An ERA must file an annual updating amendment to its Form ADV, Part 1A each year on IARD within 90 days after the end of its fiscal year. For an adviser whose fiscal year ended December 31, 2025, the deadline is March 31, 2026. When you submit your firm's annual updating amendment, you must update the responses to all required items of Part 1A, including corresponding sections of Schedules A, B, C and D. The IARD filing fee for an SEC ERA's annual updating amendment is $150. There is no IARD filing fee for a state ERA's annual updating amendment.

In addition to the annual updating amendment, an ERA must promptly amend its Form ADV, Part 1A if:

- Information in Items 1 (except Item 1.O. and Section 1.F. of Schedule D), 3 or 11 becomes inaccurate in any way; or
- Information in Item 10 becomes materially inaccurate.

More information on ERAs (both SEC ERAs and state ERAs) can be found in our article: SEC and California Exempt Reporting Adviser Compliance Filing Requirements.

STATE-REGISTERED INVESTMENT ADVISERS

State-registered advisers are subject to many of the same rules as SEC-registered investment advisers. For example, certain states, including California, require state-registered advisers to amend Parts 1, 2A and 2B of Form ADV each year on IARD within 90 days after its fiscal year end. State-registered advisers may also be required to file certain information

regarding investment discretion, custody, financial statements or other information with the state regulatory agency for the state in which the adviser is registered.

A state-registered adviser may be required to register in each state in which it has clients or any investment adviser representatives. When a state-registered adviser's RAUM increases above a certain threshold (i.e., $100 million or more), the adviser should consider whether it needs to register as an investment adviser with the SEC.

State-registered advisers, particularly investment advisers certificated by California DFPI, should review in detail our article covering the ongoing regulatory requirements for such state-registered advisers: Investment Advisers Certificated by California DFPI Compliance Filing Requirements.

INVESTMENT ADVISERS NOT REGISTERED WITH THE SEC OR STATES IN WHICH THEY HAVE CLIENTS OR OFFICES

If you are not registered with the SEC and have one or more clients or branch offices in any state other than the state of your principal place of business, you may be required to register in one or more other states or conform to an applicable exemption from registration. Please contact us immediately if you believe you may need to register in an additional state.

In addition, if your firm's RAUM has grown to $25 million or more, please contact us to discuss whether you must register with the state as an investment adviser or may rely on an applicable ERA exemption discussed on pages 14 and 15. An adviser relying on either of the SEC's ERA exemptions must file its initial Form ADV within 60 days after first relying on that exemption.

OTHER ISSUES

1. **Annual Privacy Policy Notice**. Investment advisers, whether or not registered with the SEC, and private funds domiciled in the US or having US investors, are subject to SEC and FTC regulations under GLBA governing the privacy of consumer financial information. These regulations require every adviser and private fund to notify clients and investors of the types of non-public personal information ("**NPI**") the adviser or fund collects and the extent to which it discloses that information. If the adviser or fund discloses NPI (other than certain exempt disclosures) it must give each consumer the opportunity to opt out of non-exempt disclosures. Examples of exempt disclosures are disclosures to the adviser's or fund's attorney, accountants or administrator, disclosures required by law or necessary to provide services that a consumer requests and disclosures made at a consumer's request. Non-exempt disclosures include sharing NPI with unaffiliated third parties for those parties to market their services to an adviser's consumer.

If your firm (a) discloses NPI in ways that are not exempt from the GBLA opt-out requirement, or (b) has changed its practices regarding sharing NPI that were described in its last notice to clients or investors, you must deliver an annual privacy notice to clients and investors at least once every 12 months. You may define the 12-month period, but once selected you must apply it consistently. You may deliver the annual notice conveniently by including it in an

individual account client's first quarter bill or in your annual letter to investors reporting last year's results. Please contact us if you share your clients' or investors' NPI with anyone, including affiliates, or obtain consumer credit reports in your business.

Advisers that may be subject to the CCPA, as described on page 3, should contact us to discuss how the CCPA's requirements interact with the privacy regulations described here, to ensure that their privacy notices and policies are consistent with both regulatory schemes.

2. **Pay-to-Play and Lobbyist Rules**. SEC rules disqualify investment advisers, their key personnel and placement agents acting on their behalf from seeking engagement by a government client if they have made political contributions that exceed specified thresholds. California requires internal sales professionals who meet the definition of "placement agents" (people who, for compensation, act as finders, solicitors, marketers, consultants, brokers or other intermediaries in offering or selling investment advisory services to certain government entities, including a state public retirement or university system) to register as lobbyists with the state and to comply with California lobbyist reporting and regulatory requirements.

Other state and local governments have similar requirements, but they differ widely, so you should contact us before your firm solicits any state or local government entity.

3. **SEC Investment Adviser Marketing Rule**. The SEC Division of Examinations has published three risk alerts noting areas of examination focus for the SEC's rule governing marketing, testimonials and endorsements (the "**Marketing Rule**"). Marketing Rule compliance is anticipated to continue to be an area of focus for SEC examiners in 2026 as the SEC continues its enforcement sweep for Marketing Rule compliance. Additional information on the rule is available in our client alerts: SEC Marketing Rule Information and Upcoming Compliance Deadline for SEC Marketing Rule.

4. **Qualified Professional Asset Managers**. Some SEC-registered investment advisers that provide services to and transact on behalf of employer-sponsored retirement plans, individual retirement accounts and certain private funds with retirement investors rely on the Department of Labor's Prohibited Transaction Exemption 84-14 (the "**QPAM Exemption**"). The QPAM Exemption permits SEC-registered advisers to engage in certain transactions on behalf of their Plan Clients that otherwise would be subject to ERISA's prohibited transaction restrictions. As a reminder, amendments to the QPAM Exemption became effective on June 17, 2024, and impose additional conditions on advisers seeking to rely on the exemption, including a required notice filing with the Department of Labor and confirmation that the adviser and its ownership and management satisfy the revised eligibility and misconduct standards. The amendments to the QPAM exemption are described in greater detail in our New QPAM Exemption Requirements client alert.

5. **Continuing Education Requirements for Investment Adviser Representatives**. As of January 1, 2026, twenty-four states, including California, have adopted a continuing education requirement for investment adviser representatives (an "**IAR**") acting for either a state-registered or SEC-registered adviser. Generally, supervised persons of investment advisers who provide personal investment advice to individuals who are not "qualified clients" (as defined under the Advisers Act) may have to comply with Investment Adviser Representative

licensing requirements. Many other states are in the process of adopting such requirements for IARs subject to state regulation. These requirements, based on a model securities rule adopted by the North American Securities Administrators Association (the "**NASAA**") in 2020, require an IAR to complete 12 continuing education credits by the end of each year. The 12 credits must include 6 credits of Products and Practices courses and 6 credits of Ethics and Professional Responsibility courses. Details of how to sign up for approved continuing education courses and track continuing education credit can be found on the NASAA's website.

The 2026 continuing education compliance period runs from January 1, 2026, through December 31, 2026. However, an IAR registering for the first time in a state in 2026, is not subject to the continuing education requirements until 2027. Similarly, if an IAR is registered only in states without a continuing education requirement and subsequently becomes registered in a state with a continuing education requirement for the first time, that IAR will not need to comply with the annual requirements until the next calendar year. For example, if an IAR has not been registered in any states requiring continuing education and registers in California in 2026, that IAR will begin complying with the California continuing education requirements in 2027.

An IAR who is registered in multiple states who is also registered as an IAR in his or her home state is in compliance if the IAR's home state has continuing education requirements that are at least as stringent as the model securities rule and the IAR is in compliance with the continuing education requirements of his or her home state.

6. **Cryptocurrency Developments**.

(a) **Compliance**. Some compliance considerations for advisers that manage funds or other accounts focused on, or invested in, digital assets are:National Futures Association ("**NFA**") Bylaw 1101 prohibits any registered CPO or CTA from conducting futures-related business with non-members that are required to be registered with the CFTC but have not done so. Registration status can be confirmed via the NFA BASIC database.

(ii) Any registered CPO or CTA that executes a transaction involving a cryptocurrency or cryptocurrency derivative must notify the NFA by amending the firm-level section of its member questionnaire. Registered CPOs and CTAs that have executed transactions involving cryptocurrencies or related derivatives must report the number of their client accounts that executed one or more transactions involving a cryptocurrency and the number of their client accounts that executed one or more transactions involving a cryptocurrency derivative during each calendar quarter. This information must be submitted to the NFA no later than 15 days after the end of a quarter via the firm's questionnaire.

(iii) The NFA repealed Interpretive Notice 9073 (Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities) effective December 3, 2025. NFA member CPOs and CTAs are no longer required to use standardized legend disclosures on virtual currency or virtual currency derivatives that had become outdated and overly prescriptive. NFA members may consider scaling down and further customizing offering and marketing risk disclosures.

(iv) NFA Rule 2-51, which imposes anti-fraud, just and equitable principles of trade, and supervision requirements on NFA member firms and their associated persons engaging in activities involving BTC and ETH, was expanded effective December 3, 2025 to cover all digital asset commodities that have a related commodity interest product certified by a registered entity or approved by the CFTC. Thus, as new derivatives related to digital assets other than BTC and ETH are listed for trading on CFTC-regulated trading facilities, Rule 2-51 will capture digital assets related to those derivatives.

(v) Advisers that invest in digital assets should consider whether to update their policies and procedures to address personal investments by employees in digital assets.

(b) **SEC Rescinds 2022 Accounting Guidance, Expanding Custody Services**. In January 2025, the SEC rescinded Staff Accounting Bulletin 121 ("**SAB 121**"), which suggested that financial institutions report client digital assets held in custody as balance sheet liabilities. The new guidance, Staff Accounting Bulletin 122 ("**SAB 122**"), eliminates this digital asset-specific treatment and brings these institutions under standard accounting practices. SAB 122 is expected to increase the provision of custody services for digital assets by banks, trust companies and other traditional custodians as well as accelerate the tokenization of traditional financial instruments and the use of digital ledger technology in traditional financial markets.

(c) **Revoked IRS Final Regulations for DeFi Brokers**. As of July 11, 2025, IRS and Treasury regulations from December 2024 were revoked that would have subjected certain decentralized finance (DeFi) brokers, that operate almost entirely on blockchain infrastructure and do not provide traditional on or off ramps from fiat currency to digital assets, to gross receipts and basis reporting for digital asset transactions. DeFi trading protocols operating as "digital asset middlemen" no longer have to furnish such information to the IRS and customers on IRS Form 1099-DA.

As a result, the operative federal digital asset broker reporting regime remains focused on custodial brokers and similar centralized intermediaries. Under final regulations issued in 2024, IRS Form 1099-DA gross proceeds reporting generally begins for 2025 dispositions (with reporting starting in 2026), with basis reporting phased in for certain 2026 transactions. Those trading digital assets with custodial brokers should expect increasing availability of broker-furnished reporting as these rules take effect, and should consider evaluating whether their current data, reconciliation, and tax compliance processes are positioned to leverage (and validate) that information.

(d) **State Trust Companies as Digital Asset Qualified Custodians**. Advisers Act Rule 206(4)-2 requires that any SEC-registered adviser with custody of client funds or securities maintain those funds and securities with a qualified custodian, which may include a "bank" as defined under the Advisers Act. Whether a State Trust Company meets the bank definition can be ambiguous and a fact-intensive query. On September 30, 2025, the SEC's Division of Investment Management issued a no-action letter stating that it would not recommend enforcement action under Section 206(4) of the Adviser's Act, or Sections 17(f) and

26(a) of the Investment Company Act of 1940, if a SEC-registered investment adviser or registered fund treated a State Trust Company as a "bank" for purposes of acting as a qualified custodian for digital assets and related cash, provided certain conditions are met.

The letter requires SEC registered advisers and registered funds to: (i) conduct initial and annual due diligence to confirm the trust company is authorized by its state banking regulator to provide custody services; (ii) review the company's written policies and procedures for safeguarding crypto assets, including private-key management and cybersecurity; (iii) obtain and evaluate the company's audited financial statements and internal-control reports (e.g., SOC-1 or SOC-2); (iv) enter into a written custodial agreement prohibiting lending, pledging or rehypothecation of assets; (v) ensure that client assets are fully segregated from the custodian's own assets; and (vi) provide appropriate disclosure to clients or fund boards and determine that the arrangement is in their best interest. SEC-registered advisers looking to take advantage of this no-action letter may want to consider performing additional diligence on potential State Trust Companies and updating fund offering documents for risk disclosure requirements.

(e) **The Guiding and Establishing National Innovation for US Stablecoins Act (the "GENIUS Act")**. On July 18, 2025, the GENIUS Act was signed into law and created a federal regulatory stablecoin framework. Under the GENIUS Act, a payment stablecoin is defined as a digital asset designed for payment, listed by a stablecoin issuer that maintains the coin will hold a stable value relative to a fixed amount of monetary value. Stablecoins will not be classified as securities or commodities, and permitted payment stablecoin issuers will not be classified as investment companies. Stablecoins must be fully backed on a 1:1 basis (with reserves comprising of low-risk assets like cash or cash equivalents) and subject to monthly audits. The GENIUS Act gives stablecoin holders top priority in insolvency proceedings and requires stablecoin issuers to comply with AML requirements under the Bank Secrecy Act. Implementation will unfold over a multi-year period, during which federal and state regulators will conduct extensive rulemaking to implement the GENIUS Act.

(f) **Noteworthy CFTC Digital Asset Developments**.

(i) Perpetual futures contracts (colloquially "perps") are a form of derivative that, unlike traditional futures, do not have an expiration date. They have become the dominant form of crypto derivatives trading globally, but have largely been unavailable on regulated US exchanges as jurisdictional and definitional constraints have limited their use. On April 21, 2025, the CFTC issued a request for comment seeking public input on the risks and characteristics of perpetual derivatives but has not yet issued new guidance or proposed rulemaking based on that input. In June 2025, Coinbase filed self-certifications for two perpetual futures contracts and no CFTC objection was raised. On September 5, 2025, the SEC and CFTC issued a joint statement, noting that the agencies could consider concurrent steps to onshore perpetual contracts that meet investor and customer-protection standards, potentially allowing these products to trade across SEC- and CFTC- regulated platforms.

(ii) On December 4, 2025, the CFTC announced that spot cryptocurrency products will begin trading for the first time on federally registered futures

exchanges; designated contract markets are now permitted to list spot crypto products, including leveraged contracts for retail users.

(iii) On December 8, 2025, the CFTC launched a "digital assets pilot program" providing greater certainty to commodity derivatives market participants who wish to accept digital asset collateral, including BTC, ETH and existing payment stablecoins such as USDC. Applicable guidance includes CFTC Letter No. 25-39, providing guidance on the use of tokenized assets as collateral in the trading of futures and swaps, and CFTC Letter No. 25-40, providing no-action letter relief concerning the use of digital assets as collateral by futures commission merchants and derivatives clearing organizations.

(g) **Increased Federal Scrutiny on Sourcing of Capital Gains for Puerto Rico Residents**. In recent years, Puerto Rico has become a popular tax jurisdiction for those engaging in digital asset transactions due to the potential for zero tax on passive income (including capital gains, dividends and interest) under Puerto Rico's Act 60, known as the Puerto Rico Incentives Code. However, recent congressional inquiry and IRS and Department of Justice enforcement activity underscore new heightened scrutiny of US taxpayers claiming Puerto Rico source treatment and Act 60 benefits for capital gains, particularly where gain is attributable to appreciation that accrued before the taxpayer became a bona fide Puerto Rico resident and/or where assets are held through partnerships or other flow-through entities. Treasury regulations include rules that, in many cases, treat gains from dispositions of appreciated property within 10 years after becoming a bona fide Puerto Rico resident as non-Puerto Rico source, and special attribution concepts can apply in partnership structures. Those relying on Puerto Rico incentive planning should ensure their residency, sourcing, and documentation positions are well supported and should expect continued federal enforcement focus in this area.

7. **Investment Fund Issues.**

(a) **Funds that Buy New Issues**. Generally, you may, for a period of 12 months, rely on representations made by investors in your funds in their offering questionnaires regarding their eligibility to participate in profits and losses from new issues. After that, you must obtain a re-certification of those representations each year. A convenient way to obtain the re-certifications is to send a request in the annual letter that your firm sends to investors. Re-certifications may be obtained by negative consent.

(b) **"Bad Actor" Disqualification**. Rule 506 disqualifies any issuer from relying on Regulation D in any securities offering in which certain participating persons have had certain "disqualifying events" such as certain criminal convictions and regulatory violations.

An investment adviser must determine whether it is subject to the bad actor disqualification rule each time it offers or sells securities in reliance on Rule 506. The SEC has stated that an issuer may reasonably rely on the agreement of a person covered by the bad actor rule to provide notice of a potential or actual disqualifying event in, for example, a contract or undertaking in a questionnaire or certification. If an offering is continuous, delayed or long-lived, however, the issuer must update its inquiry periodically.

An adviser to a fund relying on any provision of Rule 506 should require each of its employees and certain other persons participating in the offering of fund interests to provide written representations that he or she has not been subject to any disqualifying events and conduct other appropriate due diligence at least annually. For this purpose, an investor holding at least 20% of an investment fund's voting securities may be deemed to be participating in that fund's offering. If you have not taken steps to comply with this requirement, please contact us as soon as possible.

(c) **Foreign Account Tax Compliance Act ("FATCA") and the Common Reporting Standard ("CRS")**.

(i) **Non-US Funds**. The Cayman Islands, the British Virgin Islands and many other jurisdictions have passed legislation implementing FATCA and CRS obligations for investment funds organized in those jurisdictions. Many jurisdictions have adopted forms of FATCA/CRS self-certification questionnaires to obtain from investors all requisite information and a satisfactory form of declaration as to the investor's FATCA/CRS status. Non-US funds should use either these questionnaires or other questionnaires (many fund administrators have their own preferred forms) that satisfy all the due diligence requirements. An offshore fund that attaches those forms to its documents should ensure it is using the current versions, especially in light of recent regulatory changes to the CRS framework in key fund jurisdictions, described in section (ii) below.

The local requirements implementing FATCA and CRS require covered financial institutions ("**Financial Institutions**") to notify (or register with) the local tax information authority when the institution has reporting obligations under these requirements, appoint a designated point of contact, keep that information up to date, undertake due diligence in relation to investors and annually upload data about each reportable account to that local authority. Non-US funds should work with counsel or other service providers familiar with the applicable jurisdiction's requirements to determine the applicable due diligence, filing and compliance requirements and due dates.

(ii) **Recent Updates to CRS Regulations**. The Organisation for Economic Co-operation and Development ("**OECD**") new CRS 2.0 standards are in the process of being adopted, with varying effective dates, in most CRS jurisdictions. In the Cayman Islands, amended CRS Regulations (the "**Amended CRS Regulations**") took effect on January 1, 2026 and accelerate several key deadlines and introduce enhanced governance requirements, including the following changes.

- Registration must generally be completed by January 31 of the calendar year following the year in which an entity becomes a Financial Institution, replacing the prior April 30 deadline for new registrants (with transitional relief for entities that became a Financial Institution in 2025). All registration information and subsequent updates must be filed through the local portal within 30 days of any change.
- For the 2026 reporting period and beyond, annual CRS returns (including nil returns) and the CRS Compliance Form must be filed by June 30 of the

year following the relevant calendar year (moved forward from July 31 for returns and September 15 for compliance forms). These June 30 deadlines apply for the first time with respect to the 2026 reporting year, with filings due June 30, 2027.

- Another material change under the amended CRS framework is the requirement to appoint a Principal Point of Contact ("**PPoC**") who is resident in the Cayman Islands. Previously, the PPoC could be based in any jurisdiction; under the new rules, each Financial Institution must identify on its registration form a PPoC located in the Cayman Islands and existing registrants without a local PPoC must file a change form by January 31, 2027 to designate a Cayman resident PPoC.
- The Amended CRS Regulations also expand the scope of the "Financial Assets" definition to encompass specified electronic money products, central bank digital currencies and certain crypto-assets. This expansion means that entities holding or managing digital asset-related accounts or instruments may fall within the CRS reporting regime or, where applicable, the Crypto-Asset Reporting Framework, and should evaluate their obligations accordingly. The broader definition of reportable data and accompanying due diligence requirements should be incorporated into CRS compliance processes.

Funds and their service providers will need to update internal compliance calendars and procedures to reflect the new January 31 registration deadline and the June 30 reporting and compliance form deadlines. These deadlines and governance requirements are intended to align local CRS regimes with the OECD's updated CRS 2.0 standard and to support timely and accurate automatic exchange of information. Like the Cayman Islands, most other CRS jurisdictions (including the British Virgin Islands and European Union) are expecting to implement updating amendments for a 2026 effective date, but certain jurisdictions may delay until 2027.

(iii) **US Funds**. A US fund with offshore investors must obtain information from those investors identifying direct and indirect US account holders, using the most recent IRS forms.

(d) **Regulations that Affect Offering of Fund Interests in the European Union ("EU") and United Kingdom ("UK")**. Some of these are discussed briefly below. If you would like more information about offering fund interests in Europe, please contact us or your EU or UK counsel.

(i) **EU Second Markets in Financial Instruments Directive ("MiFID II")**. MiFID II may affect non-EU investment advisers that:

- Trade on EU trading venues;
- Trade with (or are clients of) EU counterparties;

- Market their funds through EU distributors; or
- Provide investment management services directly to EU clients.

In particular, MiFID II imposes disclosure requirements on EU third party introducers, selling agents, private banks, wealth managers and financial advisers that offer or recommend fund interests that are distributed in the EU to "retail investors," which includes ultra-high net worth individuals and non-institutional entities. If your firm has a relationship with an EU institution that might introduce your funds to EU investors, that institution will likely ask you to provide the information for the required disclosures. If you offer fund interests directly to EU investors, you may have to make the disclosures yourself.

(ii) **Packaged Retail and Insurance-Based Investment Products ("PRIIPs") Regulation (the "PRIIPs Regulation")**. The PRIIPs Regulation requires a fund to provide a key information document ("**KID**") to EU retail investors investing in PRIIPs. For this purpose, a "retail investor" is defined in a manner consistent with MiFID II. KIDs must be in a prescribed format, presenting various data on costs, risks and rewards, according to set methodologies. A KID generally contains different information than the information contained in the standard Private Offering Memorandum that our clients' funds use and must be delivered in addition to that Memorandum. Similar to the requirements under MiFID II, if a US fund manager uses a third party distributor to offer its funds in the EU, it is the distributor's obligation to provide the KID, but the US fund manager would be required to provide the information required by the KID. If you offer fund interests directly to EU retail investors, you must provide the KID and publish the KIDs on the issuer's website or coordinate with distributors of the funds in the EU to produce the KIDs.

On December 8, 2025, the UK Financial Conduct Authority set out final rules for its new regime for Consumer Composite Investments ("**CCIs**"), which has replaced the PRIPPs Regulation and the Undertakings for Collective Investment in Transferable Securities ("**UCITS**") disclosure requirements in the UK. The goal for the new CCI regime is to move away from the rigid KID format and permit fund promoters to better customize their disclosures. Documentation requirements under the new CCI regime become effective April 6, 2026.

(iii) **UK and EU General Data Protection Regulation ("GDPR")**. UK or EU GDPR may apply to a US fund manager that offers fund interests in the UK or EU. UK or EU GDPR contain requirements to provide notices about how personal information will be used, limitations on retaining personal data, requirements to delete or hand over an individual's information on request, mandatory data breach notification, requirements to maintain records of data processing activities and transfers of personal data, and standards for data controllers to demonstrate that they have obtained valid consent for certain data processing activities. If your firm (or a third party acting on its behalf) carries out personal data processing activities through a UK or EU establishment (such as by having an office or agent in the UK or an EU member state), you may be subject to UK or EU GDPR. If not, but your firm either (A) targets offering goods or services to individuals in the UK or EU (such as through specialized currency offerings of funds or other customized UK or EU marketing efforts), or (B) monitors the online behavior of UK or EU individuals (such as by profiling such persons via cross-context

behavioral advertising), then you also may be subject to UK or EU GDPR (as applicable). Please refer to our prior annual letters for more detailed information on GDPR or contact us regarding your particular inquiry.

(iv) **EU Alternative Investment Fund Managers Directive (“AIFMD”)**. AIFMD attempts to harmonize across the EU how investment funds are marketed and managed. If your firm manages a fund that has EU investors, or your fund is marketing in the EU or accepts or would accept EU investors even if it is not marketing there, your firm is likely subject to AIFMD. The Council of the EU published amendments to AIFMD (commonly referred to as AIFMD II) in 2024 that will generally apply from April 16, 2026, onwards, with some rules subject to a transitional period. AIFMD II introduces new requirements and restrictions for alternative investment funds that originate loans, and introduces additional investor disclosure requirements, including reporting information regarding resources that managers use to comply with AIFMD, how managers prevent conflicts of interest and fees and charges and expenses borne by investors. For those US advisers that rely on a host alternative investment fund manager (“**AIFM**”) whereby a third-party EU AIFM is engaged as a platform for the US firm to manage and market its own funds in the EU, it is expected that such US advisers will feel impacts of AIFM II in the form of stricter contractual provisions with their EU AIFM as well as more extensive due diligence and monitoring requirements.

The UK will not adopt the AIFMD II regime, and the UK and EU regulations will differ materially once AIFMD II is implemented. Please refer to our prior annual letters for more detailed information on AIFMD or contact us regarding how AIFMD II may affect your firm and any funds that it manages.

(v) **EU Anti-Money Laundering Rules Affect BVI Funds**. On December 4, 2025, the European Commission updated its list of high-risk jurisdictions to include the British Virgin Islands (“**BVI**”). This list of jurisdictions have what the EU considers to be strategic deficiencies in their national anti-money laundering and counter-terrorist financing regimes. Due to the addition of the BVI, beginning April 2026, when AIFMD II becomes law in EU member states, BVI alternative investment funds (and alternative investment funds managed by BVI AIFMs) cannot be marketed into the EU.

(vi) **EU Guidelines on Liquidity Management Tools for Open-Ended Funds**. On December 18, 2025, the European Securities and Markets Authority published amended guidelines on liquidity management tools (“**LMTs**”) applicable to AIFMs of open-ended alternative investment funds (“**AIFs**”). The amended guidelines clarify expectations on the design, calibration, activation, and governance of LMTs, in particular how fund managers should select LMTs in light of their investment strategies. Advisers subject to this guidance may consider reviewing their liquidity risk frameworks, fund documentation, and internal escalation processes to ensure alignment with new guidance, especially where funds are exposed to liquidity stress or market volatility.

(e) **Other International Offering/Sale Requests**. Clients frequently ask us about offering fund interests in non-EU countries. Many countries have strict private offering

requirements. Please contact us before sending marketing materials or conducting any discussions with a prospective non-US investor.

(f) **Amendments to Form D**. If you are offering private fund interests, it is likely you are required to file a notice of the offering of fund interests on Form D and amend it annually. Form D is filed electronically with the SEC and on paper or electronically in states where the fund sells interests. We can prepare Form D for your signature and file it on your behalf. If you have not filed a Form D or we have not filed one on your behalf, you should contact us.

(g) **Blue Sky**. Before offering or selling any interests in a private fund to US persons, you should inform us of the states of residence of potential new investors and of existing investors who may purchase additional interests or shares, so that we can review and advise you on compliance with applicable state securities laws and obtain the necessary electronic filing codes in advance of the filing deadline if such offer and sale requires a Form D filing with the SEC.

(h) **Form PF**. An investment adviser must file Form PF if its RAUM attributable to private funds is $150 million or more as of December 31 of any year and it is registered (or required to be registered) either with the SEC as an investment adviser or with the CFTC as a CPO or CTA. The SEC and CFTC are required to keep all Form PF information confidential and cannot be compelled to disclose it pursuant to the Freedom of Information Act but may use it for inspection and enforcement purposes. In most cases, Form PF must be filed annually, except (i) quarterly event reporting is required by private equity fund advisers for certain triggering events and (ii) large hedge fund advisers (with at least $1.5 billion in hedge fund assets under management) must report within 60 calendar days after the end of each calendar quarter and within 72 hours of certain triggering events. For more information on periodic Form PF filing requirements that became effective in 2023, see our client alert SEC Adopts Amendments to Expand the Scope of Form PF.

For advisers who are subject to quarterly filings and whose fiscal year ended December 31, 2025, the Form PF filing deadline is April 30, 2026. When a hedge fund adviser's RAUM attributable to private funds first reaches $1.5 billion as of the end of any month, it must file a Form PF within 60 days after the end of the calendar quarter in which it exceeds that threshold and thereafter must file an updated Form PF within 60 days after the end of each calendar quarter.

(i) **Form SLT Filing**. The US Department of the Treasury's Form SLT (Aggregate Holdings of Long-Term Securities by US and Foreign Residents) is designed to gather monthly information about holdings of certain securities. If your firm has less than $1 billion in assets under management, it generally will not be required to file Form SLT. You should discuss Form SLT filing requirements with your firm's accountants if (i) your firm is the investment adviser to a non-US investment fund or (ii) it manages a US-based investment fund that holds securities issued by non-US issuers and are not held by a US custodian (for example, an investment fund holds an investment in a Brazilian security that is not held by a US custodian).

(j) **Updating Offering Documents**. If you manage a private fund, you should review and update the fund offering documents annually to reflect changes in such matters as personnel changes, engagement of service providers, soft dollar arrangements and other brokerage practices, annual financial information and tax and legal requirements.

(k) **Investor Count**. If any private fund that you manage relies on the exception from the definition of "investment company" in ICA section 3(c)(1), you should consider consulting with us regarding the number of investors in the fund for purposes of the section 3(c)(1) 100-investor limit for investment funds. The SEC rules for counting such investors are complex. Please contact us if you would like our assistance in determining whether the funds your firm manages meet the section 3(c)(1) investor limits.

If you manage a qualifying venture capital fund, the fund may not have more than 250 investors if it (i) has no more than $12 million in aggregate capital contributions and uncalled committed capital, (ii) is a "venture capital fund" as defined for the "venture capital fund adviser" exemption under the Advisers Act and (iii) does not make a public offering of its securities. A venture capital or other fund may still rely on the traditional section 3(c)(1) 100-investor exclusion.

(l) **Investors that Are Mutual Funds**. If a registered investment company (a "mutual fund") is an investor in a private fund that you manage, the mutual fund may be an "affiliate" of the fund if it owns 5% or more of your fund. Please contact us to discuss this issue if you believe it may be relevant to you.

(m) **Issues Affecting Managers of Funds that Trade Commodity Interests and Swaps**. A discussion of requirements applicable to registered CPOs and CTAs is on pages 31 to 32. The following issues apply to advisers that may not be so registered but that trade commodity interests, certain swaps or retail off-exchange forex contracts for the funds and accounts that they manage.

(i) **CFTC Self-Executing Relief for Delegation by CPOs**. If a fund's CPO (typically the general partner of a fund organized as a partnership or the directors of a fund organized as a corporation) is not registered as a CPO, it may wish to delegate its CPO responsibilities rather than registering. The CFTC permits delegation without any filing as long as the designated CPO is registered and the delegating CPO and the designated CPO meet certain requirements. Please contact us if you would like to discuss this delegation.

(ii) **Swaps**. The definitions of "commodity pool operator" and "commodity trading adviser" include advisers that invest in certain swaps. An investment adviser of accounts that invest in such swaps is a CPO or CTA, or both, even if it does not invest in futures or other commodity interests. Therefore, advisers must determine whether the instruments in which they invest include swaps that are regulated by the CFTC. The definition of "swap" is complex. Some instruments that are commonly called swaps are not treated as swaps subject to CFTC regulation, and some instruments that are not traditionally called swaps are regulated by the CFTC as swaps. Perpetual futures, a derivative contract that enables ongoing speculation on the future price of a cryptocurrency asset, are swaps regulated by the CFTC as

commodity interests. If you have not considered or discussed with us whether your firm's swaps trading might cause it to be a CPO or a CTA, you should do so immediately.

Individuals registered as associated persons ("**APs**") of NFA members that engage in swaps activity must meet the NFA's Swaps Proficiency Requirements. Each NFA member with APs required to meet these requirements must designate a Swaps Proficiency Requirements Administrator who will coordinate enrollment and track progress. FAQs regarding these requirements are available on the NFA website.

(iii) **Advisers that Rely on CFTC Rule 4.13(a)(3) CPO Registration Exemption**. The exemption from CPO registration under CFTC Rule 4.13(a)(3), which is widely used by CPOs of private funds, is available to managers of funds whose investments in commodity interests, CFTC-regulated swaps and retail forex transactions are very limited. A fund may qualify if either (A) the aggregate initial margin, premiums and required minimum security deposit for retail forex transactions to establish the fund's positions in such instruments do not exceed 5% (measured when the most recent position was established) of the liquidation value of the fund's portfolio, taking unrealized profits and losses into account, or (B) the aggregate net notional value of the fund's positions in such interests is not greater than the portfolio's liquidation value. The exemption also requires that the fund be privately offered and not marketed as a vehicle for trading commodity interests and generally requires that US investors in the fund be accredited investors or knowledgeable employees.

A CPO relying on the 4.13(a)(3) exemption must claim the exemption by filing a notice with the NFA and reaffirm that claim annually within 60 days after the end of each year. The 2025 reaffirmation is due by March 1, 2026. The NFA should have sent email reminders of the reaffirmation requirement in December 2025.

CPOs interested in relying on the new No-Action Letter 25-50 instead of the CFTC Rule 4.13(a)(3) exemption should consider what offering document updates, investor notification and other contract counterparty notice may be appropriate to put in place before the CPO notifies the CFTC with its notice of reliance and then withdraws its Rule 4.13(a)(3) exemption.

(iv) **Advisers that Rely on CTA Registration Exemption**. In addition to serving as a CPO, an investment adviser to a fund that invests in commodity interests, CFTC-regulated swaps or retail forex transactions is the CTA of that fund. An adviser to a separately managed account that invests in commodity interests, swaps or retail forex transactions is also a CTA. A CTA is required to register with the CFTC unless it qualifies for an exemption. The exemptions most commonly used by investment advisers are self-executing and do not require any action by an adviser. Typically, an adviser relying on one of these exemptions provides advice solely to pools for which the adviser is exempt from CPO registration or provides only limited advice regarding commodity interests, swaps and retail forex transactions. However, some advisers rely on the exemption in CFTC Rule 4.14(a)(8). An adviser relying on this exemption must claim it by filing a notice with the NFA and reaffirm it annually within 60 days after the end of each year. Please contact us if you would like to discuss exemptions from CTA registration.

8. **Section 13 and 16 Filings**. The following filing requirements apply to an investment adviser whether or not it is SEC-registered.

(a) **Schedule 13D/13G**. If you have or share investment discretion or voting power over 5% or more of a class of equity securities of a public company, you may be required to file Schedule 13D or 13G. If you have reached or anticipate reaching that threshold with respect to any class of equity securities, you should contact us and review the filing deadlines described in our client alert available here: Amendments to Rules Governing Beneficial Ownership Reporting.

Unless you qualify to file a Schedule 13G, you must file a Schedule 13D within 5 business days after the date on which your beneficial ownership of a security exceeds 5%. If you have filed a Schedule 13D, and the information in it materially changes (including if your beneficial ownership of a security changes by more than 1% of the outstanding shares), you are required to file an amended Schedule 13D within 2 business days of such material change.

If you are eligible to file a Schedule 13G, the deadline for you to file a Schedule 13G depends on whether you are a qualified institutional investor or a passive investor. In general, a qualified institutional investor must file an initial Schedule 13G within 45 days after the end of the calendar quarter in which their beneficial ownership of a security exceeds 5%. A passive investor must file an initial Schedule 13G within 5 business days after the date on which its beneficial ownership of a security exceeds 5%.

If you have filed a Schedule 13G and the information in it has changed materially as of the last day of a calendar quarter from the latest Schedule 13G you have filed, you are required to file an amendment to that Schedule 13G within 45 days of the end of the quarter. In addition, if you are a qualified institutional investor, you must amend a Schedule 13G within 5 business days of the end of a month if your beneficial ownership as of the last day of that month exceeds 10% and, thereafter, if your beneficial ownership as of the last day of the month changes by more than 5%. If you are a "passive investor," you must amend Schedule 13G within 2 business days of the date on which your beneficial ownership exceeds 10% and, thereafter, within 2 business days if your beneficial ownership changes by more than 5%.

(b) **Forms 3, 4 and 5**. If you have or share investment discretion or voting power over more than 10% of a class of equity securities of a publicly traded company, or if you or any of your affiliates is a director or officer of a publicly traded company, you or your affiliate may be deemed a statutory insider of that company for purposes of section 16 of the Exchange Act and be required to file an initial ownership report on Form 3 with the SEC. Form 3 generally must be filed by a 10% owner within 10 days after exceeding the 10% threshold and by a director or officer within 10 days after assuming that office. Thereafter, such an insider generally must report changes in its beneficial ownership of securities (typically, a purchase or sale of the issuer's securities, including cross trades between funds that your firm manages) on Form 4 within 2 business days after the date of the change. Every person who was an insider of a publicly traded company must file an annual report on Form 5 with the SEC within 45 days after the end of the company's fiscal year, to report previously unreported transactions during the year

that should have been reported on Form 4 but were not, and certain other transactions that may be reported on Form 5.

(c) **Form 13F**. If your firm exercises investment discretion over $100 million or more that is invested in "13(f) securities" as of the end of any month in a year, you must report such holdings to the SEC on Form 13F within 45 days after the end of that year and must make quarterly filings thereafter. 13(f) securities typically include stocks, certain options, warrants, convertible debt securities and exchange-traded funds that are traded on a national securities exchange. The SEC's official list of 13(f) securities is updated on a quarterly basis and is posted here: 13(f) Securities List. If your firm first became required to file Form 13F in 2025, your initial Form 13F is due by February 17, 2026.

(d) **Form N-PX**. Each Form 13F filer must report annually on Form N-PX how it voted proxies concerning certain shareholder advisory votes on executive compensation ("say-on-pay" votes). You are not required to report how you vote proxies on other matters. Form N-PX is due no later than August 31 of each year for the most recent 12-month period ending on June 30th. The next reporting deadline for Form N-PX is August 31, 2026, with these reports covering the period from July 1, 2025, through June 30, 2026.

(e) **Form 13H**. If your firm directly or indirectly, including through entities that it controls, purchases or sells, through one or more registered brokers, any NMS security on behalf of any discretionary accounts in an aggregate amount that exceeds the identifying activity threshold, you must file Form 13H with the SEC within 10 days after crossing that threshold. The identifying activity threshold is (i) at least 2 million shares or $20 million during any day, or (ii) 20 million shares or $200 million during any calendar month. NMS securities are typically exchange-listed equities, ETFs and options.

When your firm files Form 13H, it will receive a "large trader identification number," or "LTID," from the SEC. You must provide your firm's LTID to each of the brokers with which your firm has an account. Those brokers must record trading information associated with this LTID and disclose it to the SEC on request. You must amend Form 13H within 10 days after the end of any calendar quarter during which information in your last filed Form 13H becomes inaccurate. Whether or not there have been any changes in the information in your firm's Form 13H, you must amend the Form 13H annually within 45 days of the end of each calendar year. The annual amendment for 2025 is due by February 17, 2026. Please contact us immediately if you would like our assistance in filing the amendments to your Form 13H.

9. **Profit Sharing and Waivers**. Your firm may have issued profit interests to key employees and partners. If your operating agreement or limited partnership agreement provides that the manager or general partner may adjust each participant's profit interest for the coming year on or before a specified date (typically January 31 of that year), you should make these allocation decisions, in writing and in accordance with the applicable operating agreement or limited partnership agreement, on or before that specified date. If you plan to waive management fees (including in lieu of cash payments on a general partner commitment) or items of profit or gain (including to plan into long-term capital gains), you should make these decisions in writing in accordance with the applicable underlying fund agreements.

10. **Covenants in Swap, Securities Lending and Margin Lending Agreements**. Most swap, securities lending and margin lending agreements (some of which may be in brokerage account agreements) include covenants that require your firm or your clients or funds to notify the counterparty if certain events occur. One common covenant requires notice if the net asset value of the client or fund decreases more than a specified percentage during a given period or below a specified amount. You should review those provisions carefully. Other common covenants may require you to deliver information (such as monthly NAV estimates and your funds' audited financial statements) by specified deadlines.

11. **Foreign Bank Account Reports**. Every US person or entity that had a financial interest in, or signatory authority over, a financial account in a foreign country in 2025 generally must file FinCEN Form 114 if the aggregate value of all such accounts exceeded $10,000 at any time during 2025. Form 114 must be received by the Department of Treasury by April 15, 2026, which may be automatically extended to October 15, 2026. Failure to file Form 114 when required can result in significant monetary or criminal penalties. You should consult your accountants on whether you must file Form 114.

12. **Designation of Liquidating Person or Successor Manager**. If you manage a private fund under a limited partnership agreement that provides for the designation of a "liquidating person" to liquidate the partnership's assets if the general partner is unable to do so, you should confirm that your appointment of a liquidating person, if any, is consistent with your current intentions. Even if you do not manage a private fund, you should consider designating a successor manager to manage or wind up your firm if you are unable to do so, especially if your firm has only one portfolio manager. The SEC staff has included questions about succession plans in some examinations.

13. **Registered CPOs or CTAs**. If your firm is registered as a CPO or CTA, you must comply with the requirements listed below. Please see also the discussion on pages 27 and 28 of issues that may apply to advisers that invest in commodity interests and certain swaps but are not registered as CPOs or CTAs.

(a) **Requirements Applicable to Registered CPOs and CTAs**.

(i) **Update NFA Registration**. You must update your firm's registration information on the NFA's electronic filing system annually, including submitting an annual member questionnaire and paying annual dues. NFA members must promptly update sections in the member questionnaire throughout the year to disclose material changes to the member's business operations, which make the information previously submitted inaccurate or incomplete. The NFA should send an email reminder of such update and dues, which are due by the anniversary of your firm's registration. Dues are $750 for CPOs and CTAs, plus an annual records maintenance fee of $100 for each registration category.

(ii) **Complete NFA Self-Examination Questionnaire**. Your firm must complete the NFA's "self-examination questionnaire" annually. The questionnaire is not filed with NFA but must be retained in your firm's records. You should review your compliance policies and procedures, and confirm whether amendments or additional procedures may be warranted in light of your firm's current business.

(iii) **Other Annual Requirements**. At least annually, you must:

- Test your disaster recovery plan and make any necessary adjustments;
- Provide ethics training in accordance with the NFA's rules;
- Review the CPO's or CTA's written information systems security program and provide related cybersecurity training to employees; and
- File any new exemption notices with the NFA.

(b) **Additional Requirements Applicable to Registered CPOs**.

(i) **Reporting Requirements**. Your firm must file CFTC Form CPO-PQR and NFA Form PQR with the NFA. The two forms overlap considerably, and all CPOs are permitted to meet their CFTC Form CPO-PQR filing requirement by filing NFA Form PQR.

Filings are required quarterly or annually, depending on the firm's assets under management ("**AUM**"). The method of calculating AUM for this purpose differs from the calculation of RAUM for SEC purposes. A late Form CPO-PQR is subject to a $200 fee for each business day it is late. Payment and acceptance of such fees, however, does not preclude the NFA from filing a disciplinary action for failure to comply with the deadline.

(ii) **File and Distribute Commodity Pool Reports**. For each pool that your firm manages, you must furnish each investor monthly or quarterly account statements containing certain specified financial information. You also must prepare an annual report for each pool and furnish it to each investor in the pool, and the NFA, within 90 days after the end of the pool's fiscal year (which is shorter than the 120 day requirement that generally applies under the SEC and California custody rules). Each pool's disclosure document should be updated regularly and may need to comply with specific CFTC disclosure rules. It may also need to be filed with the CFTC and the NFA.

(iii) **Offering Document**. If your firm is soliciting new investors for your pools, you must distribute an offering document that complies with specific CFTC rules and filing requirements unless you have made a filing claiming relief from certain of those obligations.

(c) **Additional Requirements Applicable to Registered CTAs**.

(i) **Reporting Requirements**. You must file Form CTA-PR with the NFA annually within 45 days after the end of each year, and NFA Form PR quarterly within 45 days after the end of the quarters ending in March, June and September. Form PR is very similar to Form CTA-PR but contains additional information. A late Form CTA-PR is subject to a $200 fee for each business day it is late. Payment and acceptance of the fees, however, does not preclude the NFA from filing a disciplinary action for failure to comply with the deadline.

(ii) **Annual Verification by FCM**. At least annually, the FCM that carries your firm's client accounts will contact your clients to verify that the information your firm obtained under NFA Compliance Rule 2-30(c) remains materially accurate, and provide each client the opportunity to correct and complete the information. If the FCM notifies you of any material changes to the information, you must assess whether your firm must provide additional risk disclosure to the client.

(iii) **Analysis of Trade Allocation**. If your firm places bunched orders, you should analyze each trading program at least quarterly to ensure that the order allocation method is fair and equitable and document this analysis.

SHARTSIS FRIESE LLP